

**CONSERVATION EASEMENT AGREEMENT
(Preservation of Floodplain and Wetlands)**

THIS CONSERVATION EASEMENT AGREEMENT is entered into as of the ____ day of _____, 2003, by and between Country Plaza South, Inc., a Nebraska corporation, Truax Homes, Inc., a Nebraska corporation, and Country Plaza, L.L.C., a Nebraska limited liability company, (hereinafter collectively referred to as "Owners") and the City of Lincoln, Nebraska ("City").

RECITALS

I.

Owners are the owner in fee simple of Lots Outlot C, Country Plaza First Addition; Lots 2, 3, and 4, Country Plaza Second Addition; and Lot 1 and Outlot A, Country Plaza Third Addition, located in the Northeast Quarter of Section 17, Township 9 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska ("Easement Area").

II.

The City is authorized to accept and hold this Conservation Easement under the terms of this Agreement and the Conservation and Preservation Easements Act.

III.

This Agreement has been submitted to the Lincoln-Lancaster County Planning Commission pursuant to the provisions of Neb. Rev. Stat. § 76-2,112 for review and recommendation and said Commission has found that the Conservation Easement is in conformance with the Lincoln City Comprehensive Plan.

IV.

The City Council of the City of Lincoln, Nebraska, has approved and accepted this Conservation Easement after duly considering the recommendations of the Lincoln City-Lancaster County Planning Commission and has authorized the Mayor to execute this Agreement on behalf of the City.

NOW, THEREFORE, in consideration of the mutual value to the Owners and City and to encourage and preserve the tree masses, wetlands, and floodplain associated with a drainage way, the City and Owners agree as follows:

1. Grant of Conservation Easement. Owners hereby create, establish, grant, and convey to City for its benefit and the benefit of the public a conservation easement over the Easement Area to preserve the wetlands, tree masses, drainage-way and floodplain within the Easement Area and to restrict development of the Easement Area subject to the following terms and conditions:

A. The following uses and practices, although not an exhaustive recital of the inconsistent uses and practices, are inconsistent with the purposes of this Conservation Easement and shall be prohibited within the Easement Area:

- i. Construction or placing of buildings, camping accommodations, or mobile homes, fences, signs, billboard or other advertising material, or any other structure;
- ii. Filling, excavating, grading, dredging, mining or drilling, removal of top soil, sand, gravel, rock, minerals, or other materials;
- iii. Building of roads, or changing in the topography of the land in any manner excepting the maintenance of foot trails or any work requested by the City;
- iv. Dumping of ashes, trash, garbage, or other unsightly or offensive material;
- v. Changing the topography of the land by placing of soil or other substances or materials such as landfill or dredging spoils;
- vi. Commercial development of any nature;
- vii. Human introduction of non-native plant species which may compete with and result in decline or elimination of native plant species;
- viii. Human introduction of non-native animal species which may compete with and result in decline or elimination of native animal species;
- ix. Any other act which, in the opinion of the City, would be detrimental to the scenic beauty, wildlife habitat, wetlands, the natural beauty, or natural resources of the Easement Area;

- x. Operation of motorized vehicles except as necessary in the use of the area as provided herein;
- xi. The broadcast application of pesticides at any time. Spot application of pesticides for the control of noxious weeds as provided by state law will be permitted;
- xii. Cultivation, planting, or drilling of row crops, small grains, and forages, such as alfalfa and forage sorghum;
- xiii. Removal of tree masses;
- xiv. Changing the hydrology of the Easement Area or the land upstream.

B. Notwithstanding the provisions in subparagraph A above, parking, private drives and roadways, a future bike path, water quality measures, streambank stability projects, including the removal of dead plant material and select trees as approved by the City, and grading associated with these uses and practices shall be permitted in the Easement Area as shown on the approved plans for Use Permit No. 138A, Special Permit No. 1855, and Special Permit No. 2021.

C. The term of this Conservation Easement will be in perpetuity unless earlier terminated pursuant to any of the following provisions:

- i. By the City pursuant to the provisions of Neb. Rev. Stat. § 76-2,113.
- ii. By the Lancaster County District Court pursuant to the provisions of Neb. Rev. Stat. § 76-2,114.

The parties agree that termination of this Agreement may be total and affect the entire Easement Area, or may be partial and result in the termination of the easement over only a portion of the Easement Area.

2. Condition of the Easement Area at Time of Grant. The wetlands and drainage-way within and flood storage and conveyance capacity of the Easement Area without limiting the generality of the terms is defined to mean the condition of the Easement Area at the time of this grant as evidenced by reports, photographs and scientific documentation on file with the City's Planning Department.

3. Protection and Maintenance of the Easement Area.

A. Owners agree to pay any real estate taxes, estate taxes or assessments levied by competent authorities on the Easement Area, including but not limited to any tax or assessment affecting the easement granted herein. Owners further agree to obtain, pay for, and continuously maintain liability and property insurance covering the Easement Area.

B. Owners shall cooperate with and assist the City at City's cost in applying for, obtaining, protecting, maintaining and enhancing any and all surface water and ground water rights and privileges related to the Easement Area by signing applications which the City deems necessary or desirable for the management, maintenance or development of the Easement Area for the purposes provided for herein.

C. Owners may, upon receipt of prior written approval from the City, remove dead branches and fallen limbs from trees in the drainage-way.

4. Inspections, Educational Use and Access by City. The City shall have the right of reasonable ingress and egress to and from the Easement Area from public roads and streets and from adjacent properties for its employees, contractors, vehicles and equipment for the purpose of inspecting, maintaining, protecting or enhancing the wetlands within the Easement Area as the City may deem necessary or desirable. The City shall further have the right to enter the Easement Area in groups of not more than three, unless larger groups are agreed to, at all reasonable times upon notification to Owners for the purpose of observing and studying nature and for the purpose of making scientific and educational observations and studies. Owners agree that consent to entrance by groups of more than three shall not be unreasonably withheld. The City shall indemnify and hold Owners harmless of and from any damage to the Easement Area or to persons resulting from the entry of such groups (whether more or less than three) onto the Easement Area.

5. Enforcement. Owners agree that the City may enforce the provisions of this Conservation Easement by any proceeding at law or in equity, including but not limited to, the right to require restoration of the Easement Area to the condition at the time of this grant. Owners further agree that the City may seek an injunction restraining any person from violating the terms of this Conservation Easement and that the City may be granted such injunction without posting of any bond whatsoever. Owners further agree that the City does

not waive or forfeit the right to take any action as it deems necessary to insure compliance with the covenants and purposes of this grant by any prior failure to act. Owners further agree that should owner undertake any activity requiring the approval of the City without or in advance of securing such approval, or undertake any activity in violation of the terms of this Conservation Easement that City shall have the right to enforce the restoration of that portion of the Easement Area affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In such case, the cost of such restoration and the City's cost of suit, including reasonable attorney fees, shall be paid by Owners.

6. Title to Easement Area. Owners covenant that Owners are the owners of marketable title to all of the Easement Area and have legal right, title and capacity to grant the Conservation Easement granted herein subject to easements and restrictions of record.

7. Binding Affect. The Conservation Easement granted herein shall run with the land and shall inure to the benefit of and be binding upon the heirs, successors and assigns of Owners and City.

8. Recordation. The parties agree that this Agreement shall be duly filed by the City with the Lancaster County Register of Deeds upon execution and acceptance by the City. Filing fees shall be paid in advance by the Owners.

9. Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those to which it is found to be invalid shall not be affected thereby.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth above.

COUNTRY PLAZA SOUTH, INC.

By: _____
Timothy E. Cox, President

TRUAX HOMES, INC.

By: _____
Allan R. Truax, President

COUNTRY PLAZA, L.L.C.,

By: _____
Lyle L. Loth, Member

By: _____
Diane M/ Loth, Member

Attest:

CITY OF LINCOLN, NEBRASKA

City Clerk

By: _____
Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by Timothy E. Cox, President of Country Plaza South, Inc., a Nebraska corporation, on behalf of the corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by Allan R. Truax, President of Truax Homes, Inc., a Nebraska corporation, on behalf of the corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, by Lyle L. Loth and Diane M. Loth, members of Country Plaza, L.L.C., a Nebraska limited liability company, on behalf of said limited liability company.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2003, Coleen J. Seng, Mayor of the City of Lincoln, Nebraska on behalf of the City of Lincoln, Nebraska.

Notary Public

[AGR\03R-242 Att B.wpd]